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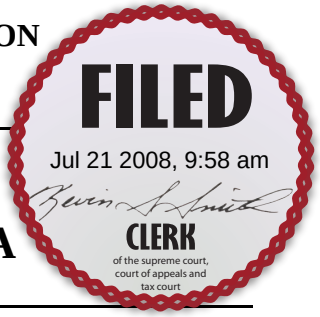

IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF T.E.M.,	)	
RUSTY SHANNON,	)	
Appellant,	)	
vs.	)	No. 48A02-0803-JV-276
MADISON COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Jack L. Brinkman, Judge
Cause No. 48D02-0702-JT-73

July 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Rusty Shannon appeals the involuntary termination of his parental rights, in Madison Superior Court, to his son, T.E.M. We affirm.

Issue

The sole issue on appeal is whether there is clear and convincing evidence supporting the trial court's judgment.

Facts

Shannon is the biological father of T.E.M., born on January 28, 2000.[1] The facts most favorable to the trial court's judgment reveal that on February 9, 2005, Madison County Department of Child Services ("MCDCS") family case manager Mendi Godbey received a report that T.E.M. had informed school officials his half-brother, J.M., was not in school because J.M.'s father, who was also T.E.M.'s mother's live-in boyfriend, had punched J.M. in the eye and the children's mother said it was still too red to go to school. The MCDCS conducted an investigation, and on February 10, 2005, T.E.M. and his half-siblings, J.M. and S.M., were removed pursuant to an emergency detention order and temporarily placed in foster care.

On February 15, 2005, the MCDCS filed a petition alleging T.E.M., J.M., and S.M. were children in need of services ("CHINS"). At the time, Shannon's whereabouts were unknown. On or about June 21, 2005, T.E.M. and his siblings were found to be CHINS. Shannon's whereabouts remained unknown. On September 1, 2005, following a

[1] Shannon is not the biological father of T.E.M.'s half-siblings.

dispositional hearing, the trial court formally removed T.E.M. and his siblings from the care and custody of their mother. The children were made wards of the MCDCS and a dispositional decree was entered detailing various services for the children's mother to complete in order to achieve reunification with her children. Shannon's whereabouts remained unknown to the MCDCS, but notice of the hearing was made via publication.

For the next year, the CHINS proceedings continued; however, Shannon's whereabouts remained unknown. Consequently, Shannon did not participate in services or participate in any of the CHINS hearings. On December 22, 2006, Shannon contacted MCDCS family case manager Amanda Stokes and informed Stokes that he had learned from a friend that the court was looking for him. On January 18, 2007, Shannon attended a review hearing wherein he was ordered to complete paternity testing. Shannon complied with the court's order and was determined to be T.E.M.'s biological father.

On February 19, 2007, the MCDCS filed a petition to terminate Shannon's parental rights. On August 2, 2007, Shannon appeared for an initial hearing on the termination petition. At the hearing, Shannon executed a consent form for the voluntary termination of his parental rights to T.E.M. The hearing was then continued to allow Shannon the opportunity to consult with an attorney regarding his decision. Sometime thereafter, Shannon withdrew his consent to voluntarily terminate his parental rights to T.E.M.

Meanwhile, on October 4, 2007, Shannon was ordered to participate in a parenting assessment. Shannon completed the parenting assessment and several recommendations resulted, including but not limited to: (1) that Shannon participate in supervised visitations with T.E.M.; (2) that Shannon obtain and maintain legal employment and provide proof

thereof; (3) that Shannon obtain housing independent from his grandmother's residence that is appropriately safe and large enough for both he and T.E.M.; and, (4) that Shannon participate in home-based counseling. However, because the petition for involuntary termination of Shannon's parental rights had already been filed, the MCDCS did not make any referrals for Shannon to participate in these recommended services.

On December 11, 2007, a fact-finding hearing on the involuntary termination petition was held. Shannon did not appear but was represented by counsel. At the termination hearing, Stokes testified that Shannon was unemployed, was still living with his grandmother, and had only visited T.E.M. two times. Stokes further testified that although Shannon had submitted to paternity testing, he had not taken any legal action to establish his paternity of T.E.M. Finally, Stokes testified that she believed it was in T.E.M.'s best interests for Father's parental rights to be terminated and for T.E.M. to be adopted, along with his half-sister, by his relative foster parents.

At the conclusion of the hearing, the trial court took the matter under advisement, and on December 20, 2007, the trial court issued its judgment terminating Shannon's parental rights to T.E.M. This appeal ensued.[2]

Analysis

This court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001).

[2] The trial court's judgment also terminated T.E.M.'s mother's parental rights to the children. T.E.M.'s mother, who had also previously consented to the voluntary termination of her parental rights to all three children, does not participate in this appeal.

When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. In deference to the trial court's unique position to assess the evidence, we will set aside the trial court's judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. Thus, if the evidence and inferences therefrom support the trial court's decision, we must affirm. Id.

In the present case, the trial court concluded that the elements set forth in Indiana Code Section 31-35-2-4(b)(2) were satisfied, but it did not issue specific findings. Therefore, the judgment is general in nature. When the trial court makes no specific findings, but instead enters a general judgment, it should be affirmed upon any theory supported by the evidence. Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 371 (Ind. Ct. App. 2007), trans. denied.

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. However, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. K.S., 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. at 836.

In order to terminate a parent-child relationship, the State is required to allege:

(A) one (1) of the following exists:

* * * * *

(iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

* * * * *

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Shannon does not challenge the trial court's determination that T.E.M. had been removed from his care for fifteen of the last twenty-two months, or that the MCDCS had a satisfactory plan for the care and treatment of T.E.M., namely, relative adoption. Shannon does assert, however, that the MCDCS did not prove by clear and convincing evidence that: (1) a reasonable probability exists that the conditions resulting in T.E.M.'s removal from his care will not be remedied or that continuation of the parent-child relationship

poses a threat to T.E.M.'s well-being; and (2) termination of Shannon's parental rights is in T.E.M.'s best interests.

I. Remedy of Conditions

Shannon first asserts "the [MCDCS] did not show at the time of the termination hearing that the conditions which resulted in removal could not be remedied." Appellant's Br. p. 8. Specifically, Shannon claims that because T.E.M. "had not been removed from [him] initially" and because he had "complied with the services he was ordered by the Court to complete which was a [p]arenting assessment[,]" the "ending of the parental tie between parent and child was totally inappropriate." Id.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). The MCDCS is not required to rule out all possibilities of change; rather, it need establish "only that there is a reasonable probability that the parent's behavior will not change." In re Kay. L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

The record reveals that despite the fact Shannon had withdrawn his consent to voluntarily terminate his parental rights to T.E.M., Shannon failed to take any action to establish legal paternity of T.E.M., even after the DNA testing confirmed he was T.E.M.'s

biological father. Shannon also failed to appear for the termination hearing on the MCDCS's petition to involuntarily terminate his parental rights to T.E.M. Additionally, Stokes testified she was unable to place T.E.M. with Shannon when he first contacted the MCDCS in late 2006 because "[Shannon] didn't have a place of his own to live or any income, or means to care for [T.E.M.]." Tr. p. 17.

At the time of the termination hearing, approximately one year later, Shannon was still unemployed and was still residing with his grandmother, who was providing Shannon with both room and board. Consequently, when questioned whether she believed she was now in a position to recommend that T.E.M. be placed with Shannon, Stokes responded, "No." Id. at 20. Stokes again answered in the negative when asked if she felt the conditions that had necessitated T.E.M.'s removal could be remedied. Id. Finally, in addition to being completely absent from T.E.M.'s life and failing to contact the MCDCS or participate in any of the underlying CHINS proceeding for approximately one-and-a-half years following T.E.M.'s removal from his mother's care, Shannon had only visited T.E.M. twice by the time of the termination hearing.

"A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." In re L.S., 717 N.E.2d 204, 210 (Ind. Ct. App. 1999), trans. denied. Additionally, the failure to exercise the right to visit one's child demonstrates a "lack of commitment to complete the actions necessary to preserve [the] parent-child relationship." Lang, 861 N.E.2d at 861. Based on the foregoing, we conclude that clear and convincing evidence supports the trial

court's determination there is a reasonable probability the conditions resulting in T.E.M.'s continued placement outside Shannon's care will not be remedied.[3] A trial court need not wait until a child is "irreversibly influenced" such that his physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002), trans. denied. Under the facts of this case, it is unfair to ask T.E.M. to continue to wait until Shannon is willing and able to complete, and benefit from, the help that he needs. The approximately two-and-a half years that have already passed is long enough.[4] See In re Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children "on a shelf" until their mother was capable of caring for them).

II. Best Interests

Next, we address Shannon's allegation that the MCDCS failed to prove termination of his parental rights is in T.E.M.'s best interests. In making this allegation, Shannon claims that a child may not be removed from the custody of his parents merely because

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[3] Although a thorough review of the record leaves us satisfied that, in this particular case, clear and convincing evidence supports the trial court's judgment terminating Shannon's parental rights to T.E.M., we do not intend for this opinion to be construed as condoning the MCDCS's questionable decision to not call the majority of its witnesses, including the CASA and T.E.M.'s therapist, because it did not want to waste the trial court's time, and because it felt the five additional witnesses "would just confirm what Ms. Stokes had already indicated." Tr. p. 26. The MCDCS's remaining witnesses could have provided much better insight into the circumstances surrounding this case. The right to raise one's children is a precious, essential, and constitutionally protected right, the termination of which we do not take lightly. Any additional time spent hearing from all the MCDCS's witnesses, in our view, would not have been wasted.

[4] Having determined the trial court's conclusion regarding the remedy of conditions is not clearly erroneous, we need not address the issue of whether the MCDCS failed to prove that the continuation of the parent-child relationship poses a threat to T.E.M.'s well-being. See L.S., 717 N.E.2d at 209 (explaining that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive).

there is a better place for the child to live and further asserts that "[i]nadequate housing and income are not sufficient to terminate rights." Appellant's Br. p. 12.

We are mindful that when determining what is in the best interests of a child, the court is required to look beyond the factors identified by the Department of Child Services and look to the totality of the evidence. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the children. Id. In addition, we have previously determined that the recommendations of the caseworker that parental rights be terminated support a finding that termination is in the child's best interest. Id.

Due to the lack of specific findings or elaboration in the trial court's judgment, we do not know the specific evidence the trial court relied upon when reaching its conclusion that termination of Shannon's parental rights is in T.E.M.'s best interests. However, the record reveals that, in addition to Shannon failing to remedy the conditions that resulted in T.E.M.'s continued placement outside his care, family case manager Stokes recommended termination of Shannon's parental rights.

Stokes informed the court that T.E.M. had endured "quite a history of neglect and sexual abuse" and, as a result, continues to struggle with "intense behavioral issues" requiring bi-weekly therapy. Tr. p. 19. Additional testimony indicates Shannon did not have a driver's license or any form of transportation at the time of the termination hearing. When questioned why she believed termination of Shannon's parental rights is in T.E.M.'s best interests, Stokes replied:

> Mr. Shannon has not made a consistent effort to . . . be a part of [T.E.M.'s] life[.] [I]t took us quite some time to make contact with Mr. Shannon just to let him know . . . what was going on with his child . . . to arrange for paternity testing and so on . . . . I also, um, do not see the things that are necessary for [T.E.M.] to remain safe in [Shannon's] care . . . as he does not have a way to facilitate transporting [T.E.M.] to necessary medical and therapeutic appointments on a regular basis[,] nor does he have the income to support a child.

Id. at 18. Finally, Stokes informed the court that T.E.M. resided in a foster home that was a "very supportive and therapeutic environment[,]" that T.E.M. was very bonded with his sister who also resided in the same foster home, that living with his sister was "really important to T.E.M.[,]" and that the permanency plan was for both children to be adopted by the same relative foster parents. Id. at 20.

Based on the totality of the evidence, we conclude the trial court's determination that termination is in T.E.M.'s best interests is supported by clear and convincing evidence. See In re A.I., 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that the testimony of the CASA and the family case manager, coupled with the evidence that the conditions resulting in the continued placement outside the home will not be remedied, is sufficient to prove by clear and convincing evidence that termination is in the child's best interest), trans. denied.

Conclusion

A trial court's termination of parental rights will be reversed only upon a showing of clear error, that is, one which leaves us with a definite and firm conviction that a mistake has been made. In re M.M., 733 N.E.2d at 14. We find no such error here. The trial court's judgment terminating Shannon's parental rights to T.E.M. is therefore affirmed.

Affirmed.

CRONE, J., and BRADFORD, J., concur.